services.[29] The pricing of interstate exchange access services by ILEC advanced services affiliates must be cost-supported in order to ensure that the affiliates are not under-recovering treat ILEC affiliates that provide intrastate advanced services as nondominant competitive carriers.

D. ILEC Advanced Services Affiliates Should Not be Eligible to Resell the ILECs' Services Pursuant to Section 251(c)(4)
(*NPRM*, ¶ 101)

One of the FCC's goals in this proceeding is to facilitate the development of competition in the local markets by increasing both the number and effectiveness of interconnection options available to CLECs lacking an ILEC affiliation. At the heart of this goal is the notion that, by application of the nondiscrimination provisions proposed herein, the ILEC will be required to make available to unaffiliated CLECs the types of interconnection offered to its advanced services affiliates. Unfortunately, if the affiliate resells ILEC services or otherwise structures its interconnection with the ILEC in a form that would not be useful to unaffiliated CLECs, the FCC's basic premise fails.

Thus, to ensure that its goal of expanding the range and effectiveness of interconnection and unbundling options available to CLECs is achieved, the Commission must not permit an ILEC advanced services affiliate to resell any services obtained from its parent. e.spire notes that none of the disadvantages inherent with resale as an option for CLECs is material to an ILEC's affiliate. For example, most CLECs disfavor resale as an option because, in addition to providing little and often no profit, it gives CLECs no way of distinguishing themselves from the underlying ILEC provider. An affiliate, by contrast, likely would benefit from any such

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29 *Id.* ¶ 100.

confusion with its powerful ILEC parent or sibling. In addition, an ILEC affiliate probably would be indifferent to any unfavorable or prohibitive resale pricing. Resale between an ILEC and its advanced services affiliate effectively involves an internal transfer of funds. Clearly, under these circumstances, the ILEC affiliate and the CLEC are not similarly situated.

Accordingly, the Commission must require ILEC advanced services affiliates to obtain the capabilities they need to provide retail service through the purchase of UNEs. By eliminating resale as an option, the FCC would force the affiliate to bear the same economic incentives and disincentives that face unaffiliated CLEC providers. e.spire submits that this is the only method by which the Commission can attain its goal of ensuring that ILEC affiliates and CLECs function alike, and increasing the types of interconnection and UNEs available to CLECs.

E. Transfers of Any Assets Should Make An Affiliate an Assign (*NPRM*, ¶¶ 104-115)

As discussed above, the Commission tentatively has concluded that an ILEC's advanced services affiliate will not be subject to the requirements of Section 251 unless the affiliate qualifies as a successor or assign of the ILEC, or as a "comparable carrier."[30] However, the Commission also tentatively has concluded that certain transfers between the ILEC and the advanced services affiliate will transform the affiliate into a successor or assign of the ILEC.[31] Specifically, the FCC has suggested that any wholesale transfer of network elements used to provide advanced services that are subject to the requirements of Section 251(c)(3) would qualify the affiliate as an assign of the ILEC.[32] Similarly, the Commission suggested that the

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30 *Id.* ¶¶ 90-91, 104.

31 *Id.* ¶¶ 105-07.

32 *Id.* ¶ 106.

transfer of local loops from the ILEC to the advanced services affiliate would make the affiliate an assign and subject the affiliate to ILEC regulation.[33] e.spire concurs with each of these tentative conclusions.

The Commission has sought comment on what, if any, additional asset transfers could push the advanced services affiliate over the "successors or assigns" edge.[34] Quite simply, e.spire believes that *any* transfer, under any circumstances, from the ILEC to its affiliate, whether of equipment, facilities, real estate, information, personnel, or any other asset enumerated in the *Order/NRPM*, and regardless of where the asset is located, would subject the affiliate to regulation as an ILEC. e.spire submits that no advanced services affiliate could function just like a CLEC, and hence as a "truly separate" affiliate, if the ILEC were to establish the affiliate from the ground up with its own equipment or facilities, or to facilitate the affiliate's creation with monopoly incumbent revenues.

Accordingly, the Commission should not exempt, for any period of time, ILEC advanced services affiliate transfers from either the affiliated transaction rules or the nondiscrimination requirement proposed in the *Order/NRPM*.[35] For similar reasons the Commission should refrain from adopting any other exceptions – including, but certainly not limited to, any sort of *de minimis* exception -- to any restrictions imposed on ILEC transfers to their advanced services affiliates.[36] In short, in order for an ILEC advanced services affiliate to function like a CLEC, it must do so from inception.

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33 *Id.* ¶ 107.

34 *Id.* ¶ 113.

35 *See id.* ¶ 111.

36 *See, e.g., id.* ¶ 108.

III. REFORMED NATIONAL COLLOCATION RULES WILL PROMOTE LOCAL COMPETITION AND FACILITATE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY
(*NPRM*,¶¶ 118–149)

The unavailability and exorbitant expense of physical collocation space in ILEC central offices is a substantial barrier to CLEC efforts to deploy advanced telecommunications capability. Increasingly, CLEC efforts to expand the coverage of their networks are being met by ILEC notifications that physical collocation space is exhausted. Even where collocation space is available, the intervals involved in obtaining use of the space can approach a year and up-front charges can total hundreds of thousands of dollars per location. As has been demonstrated recently in state proceedings, solutions to these problems are readily available, but generally ILECs are not willing to implement them voluntarily. e.spire, therefore, supports the Commission's establishment of minimum collocation standards to resolve the collocation crisis on a national basis.[37]

A. The Commission Should Require All ILECs Nationally to Offer the More Efficient Collocation Options Identified in State Proceedings
(*NPRM*, ¶¶ 118–125)

Under Sections 201 and 251 of the Act, the Commission unequivocally has the authority to establish national collocation standards in order to promote local competition and speed the deployment of advanced services.[38] State regulators have compiled an extensive record which

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37 *Id.* ¶ 124.

38 *Id.* ¶¶ 118, 123.

identify remedies to the lack of collocation space, as well as the exorbitant cost and delay involved with obtaining access to available space. e.spire respectfully submits that the Commission should adopt the solutions developed in these state proceedings on a national basis, so that CLECs can avoid the time-consuming and expensive process of repeating this effort in every state. In particular, e.spire commends the solutions being implemented in the states of New York and Texas. These states are leading the way in developing imaginative and effective collocation solutions, several of which are outlined below.

Extended Link. Currently, CLECs must establish collocation arrangements even if they intend to serve only a few customers located in an end office coverage area through use of unbundled loops. The need to establish costly collocation arrangements can be a substantial deterrent to expansion into areas that are not commercial centers. e.spire strongly supports efforts of the New York Public Service Commission ("New York PSC") to solve this problem by creating a new UNE known as the Enhanced Extended Loop ("Extended Link" or "EEL"). The extended link arrangement makes it possible for CLECs to reach customers through a single transmission facility composed of a loop, multiplexing, and transport that extends to the customer premise from the CLEC's point of interface. Through the use of Extended Links, CLECs are able to utilize collocation in one central office to serve end users via unbundled facilities derived from multiple end offices. This eliminates the need for CLECs to collocate in each and every end office and conserves scarce collocation space. In adopting national standards, the Commission should require ILECs to provide the Extended Link at cost-based rates, and without use restrictions, to support the provision of all telecommunications services. Such action will substantially further facilities-based CLECs efforts to deploy advanced telecommunications capability.

Shared Cages. The New York PSC is considering another form of collocation which would allow multiple CLECs to collocate in a single cage. Besides the obvious economies realized by sharing collocation space, shared cage arrangements are an attractive collocation alternative because they allow facilities-based CLECs to migrate customers easily from ILEC facilities to their own, as the customer's loop already is terminated at the CLEC cross-connect frame. e.spire strongly supports adoption of this collocation alternative. The Commission should specifically require ILECs to allow CLECs to share collocation space, *including space in existing collocation cages.*

Cageless Collocation. A number of states have considered requiring "cageless" collocation. A few ILECs also have voluntarily offered a cageless collocation arrangement voluntarily.[39] There are two general varieties of cageless collocation. Under one form, CLECs establish physical collocation arrangements in areas around the ILEC main distribution frame ("MDF").[40] Another form of cageless collocation (known as Separate Collocation Open Physical Environment, or "SCOPE" in New York) allows CLECs to collocate in a secured, but separate part of the ILEC central office. In a SCOPE collocation arrangement, there is no cage enclosure around an individual CLEC's equipment, and CLECs are responsible for the

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39 *MO&O/NPRM*, ¶ 139. e.spire notes that Covad Communications, a company that has executed a number of interconnection agreements with U S West that contemplate cageless collocation, has testified that U S West is backsliding on many commitments related to the cageless collocation arrangement. Collaborative session, NY Case 98-C-0690, *Proceeding on the Motion of the Commission to Examine Methods by Which Competitive Local Exchange Carriers Can Obtain and Combine Unbundled Network Elements* (Sept. 14, 1998).

40 *See* Bell Atlantic-New York's Sept. 2, 1998, Draft Collocation With Escort Proposal, NY Case 98-C-0690.

installation and maintenance of their own equipment.[41] SCOPE also employs a point of termination bay that may be shared with other CLECs. The capacity of the bay can be expanded by adding increments to the frames on the bay. e.spire urges the Commission to promulgate national collocation rules requiring ILECs to make available cageless collocation arrangements modeled after those put in place by the aforementioned state commissions, which allow CLECs to install equipment at any point within an ILEC central office. The Commission also should clarify that CLECs will be permitted to install and perform routine maintenance on their collocated equipment without ILECs imposing the added cost of a line of sight escort, so long at the work is performed by an ILEC-approved contractor

Adjacent Collocation. Some states have approved adjacent collocation alternatives which serve as a viable option to direct collocation arrangements.[42] As with cageless collocation, there are two general varieties of adjacent collocation. With the first, "Adjacent On-Site Collocation," the ILEC builds a structure on the same property as the central office and permits CLECs to place their equipment in this structure. The ILEC then provides a connection for CLEC equipment to the MDF in the central office. The second form of adjacent collocation, "Adjacent Off-Site Collocation" involves the construction or rental by either the ILEC or CLEC of property near the central office, but not on the same property as the central office. Carriers establish a mid-span meet that connects the CLEC's equipment to the central office and the MDF

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41 *See* Revisions to New York Telephone Company's 914 P.S.C. Tariff, (filed July 23, 1998).

42 *See In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,* Comments of the DSL Access Telecommunications Alliance, CC Docket No. 98-146, pp. 14-15 (filed Sept. 14, 1998).

therein. Adjacent collocation provides CLECs with the same functionality as direct collocation but fewer problems to the extent that there is no worry about space being exhausted or about security concerns. Having this alternative available will give CLECs more opportunity to optimize the available collocation arrangements. Thus e.spire submits that the Commission should identify adjacent collocation as one of the options that must be made available to CLECs seeking physical collocation. Further, with respect to "adjacent off-site collocation," e.spire urges the Commission to make clear that the cost of the mid-span meet must be shared by the ILEC and the CLEC

Technically Feasible Alternatives. When one ILEC makes a new form of collocation available, e.spire submits that the Commission should endorse a very strong, but potentially rebuttable, presumption that the new form of collocation is technically feasible at other ILEC premises.[43] e.spire notes that there could exist in some rare instance a case where a collocation practice would not be transferable among ILECs. However, ILECs generally deploy essentially similar, if not identical, equipment throughout their networks, and thus, as a general rule, what is technically feasible for one ILEC is technically feasible for all ILECs.

Unrestricted Cross Connects Between Collocated CLECs. In any national collocation standards, the Commission expressly should note that ILECs may not limit a CLECs effort to cross-connect collocated equipment - either within the same collocation area or between different areas of the same central office. Many ILECs, such as Bell Atlantic, will not permit CLECs to cross-connect equipment collocated on different floors of a central office. Instead, CLECs must

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43 *Id.* ¶ 139.

pay the ILEC for cabling, racking, and installation at the ILEC's tariffed rate, which typically is much more expensive than what it would cost the CLECs to do the work themselves. The Commission should reject any such limit on cross-connection and adopt rules similar to those promulgated by the Texas PUC, under which CLECs may install their own cross-connections, even in instances where two CLEC collocation arrangements are located on separate floors or are otherwise noncontiguous.[44] As is the case in Texas, the rules also should specify that the CLECs *themselves* should be allowed to perform all installation associated with the cross connects.

Resolution of Collocation Disputes. In the absence of an effective enforcement mechanism, even the best collocation rules will not speed the deployment of advanced technologies. Therefore, the Commission should clarify that the FCC's new accelerated docket will have jurisdiction over ILECs and CLEC collocation disputes. [45]

Provisioning Intervals/Liquidated Damages for Missed Intervals. Base-line provisioning intervals should be included in any Commission collocation standards. At present, e.spire suggests that the Commission adopt the provisioning intervals established by the New York PSC. e.spire feels that the New York intervals strike a reasonable balance between the CLEC need to obtain access to collocation space and the ILEC need to have a reasonable amount of time to deliver collocation space. To encourage ILECs to meet Commission-set provisioning deadlines, e.spire recommends that the Commission endorse liquidated damages rules, similar to

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44 Public Utility Commission of Texas, Arbitration Award, Issue No.34, *Petition of MFS Communications Company Inc. for Arbitration of Pricing of Unbundled Loops,* Docket No. *16189 et al.* (Sept. 30, 1997).

45 *See In the Matter of Implementation of the Telecommunications Act of 1996 - Amendment of Rule Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers,* CC Docket No. 96-238, Second Report and Order (rel. July 14, 1998).

those promulgated by the Texas PUC, for use in cases where an ILEC fails to meet provisioning deadlines.

B. ILECs Should Be Required to Drop Unreasonable Restrictions on the Types of Equipment that Can Be Collocated
(*NPRM*, ¶¶ 126–135)

Increasingly, ILECs are using restrictions on the types of equipment that can be collocated as a way to prevent CLECs from employing efficient network architectures. Therefore, espire strongly supports the Commission's tentative conclusion that "incumbent LECs should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate."[46] The Commission should modify its collocation rules to provide that any equipment that contains routing, aggregating, or multiplexing functionality, including remote switching modules, frame relay switching equipment, DSLAMs and IP routers, may be collocated in the central office.

Fine distinctions between equipment which is capable of switching versus aggregation, or basic versus enhanced services functionality, are increasingly infeasible. Remote switching capabilities often are inherent in modern subscriber line concentration equipment, and precluding collocation of such equipment – or requiring the disabling of some of its capacity – is to stand in the way of technological progress. Similarly, as telephony migrates from circuit-switching to packet-switching, regulatory fiats preventing collocation of equipment with enhanced services capabilities will stifle technological innovation. Thus, e.spire respectfully suggests that ILECs should be required to permit collocation of any equipment necessary to provide any

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46 *MO&O/NPRM*, ¶ 129.

telecommunications *or* enhanced service.[47] To the extent that any restrictions are placed on such equipment, the restrictions should be based on the size, not the functionality, of the equipment.

e.spire also agrees with the Commission's tentative conclusion that all equipment placed on ILEC premises be compliant with NEBS technical standards. However, e.spire does not support the requirement that equipment meet NEBS *performance* requirements.[48] e.spire agrees that by requiring CLECs to meet NEBS performance requirements in addition to NEBS safety requirement, ILECs could unilaterally impose unreasonable, costly and burdensome requirements upon CLECs. Therefore, the Commission should clarify that CLECs need meet only NEBS safety requirements.[49]

C. ILECs Should Be Required to Discontinue Unnecessary and Anticompetitive Collocation Requirements
(*NPRM*, ¶¶ 136–149)

CLEC efforts to collocate have been frustrated unreasonably by unsupported ILEC claims that space is exhausted and by arbitrary ILEC security requirements. e.spire again urges the Commission to look to the "best practices" of the states, and adopt them on a national basis.

1. Space Availability and Space Exhaustion

Regarding space availability, e.spire strongly supports the Commission's tentative conclusion that ILECs "should . . . allow any competing provider that is seeking physical

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47 However, e.spire agrees with the Commission's conclusion that to the extent that the central office will accommodate only one carrier, the ILEC's advanced service affiliate should not be allowed to collocate its switching equipment.

48 *Id.* ¶ 134, n. 250.

49 *Id.* ¶135, n. 253.

collocation at the LEC's premises to tour the premises" to confirm space exhaustion.[50] e.spire similarly supports the Commission's tentative conclusion that ILECs must provide CLECs with information on the availability and use of collocation space in ILEC end offices.[51]

Requiring ILECs to report on space utilization will aid CLECs in developing collocation plans. In instances where space is not available in a CLEC's central office of choice, the CLEC will know to apply for a virtual collocation arrangement, collocate in a nearby central office, or perhaps attempt to negotiate a subleasing arrangement with a CLEC in a specific central office. Accurate, publicly available summary reports on collocation space utilization will enable CLECs to identify the central offices in which they collocate.

The Commission similarly should affirm efficient space utilization rules for collocation arrangements. With the availability of collocation space becoming an increasingly important issue to ILECs and to CLECs, the Commission should continue to enforce existing collocation space utilization rules and expand these rules to require ILECs and CLECs to report on space utilization, and the Commission should make summary-level *(i.e.,* no companies need be identified by name) utilization reports publicly available. Requiring ILECs and CLECs to report space utilization rates will ensure that scarce collocation space is used efficiently.

Space utilization reporting should mitigate space warehousing problems. If industry consolidation continues at its rapid pace, some companies could end up possessing very large amounts of collocation space in some central offices, and it may be the case that the CLEC could consolidate its collocation equipment into a smaller area if the space were used efficiently. If a

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50 *Id.* ¶ 146.

51 *Id.* ¶ 147.

CLEC is not utilizing its space efficiently according to Commission rules, the CLEC should either sublease a portion of the space to another CLEC or turn the space back over to the ILEC.

2. Security Measures

The Commission should reject any effort of ILECs to impose artificially high security costs onto CLECs for collocation. ILECs oftentimes require CLEC technicians to be escorted by ILEC personnel when accessing a CLEC's collocated equipment for maintenance or similar purposes. e.spire submits that requiring escorts is needlessly expensive and time consuming, especially in cases where an escort has to be dispatched from a distant ILEC central office. The Commission should expressly state that it disfavors ILEC escort requirements, and instead incent ILECs to utilize less costly security measures.

e.spire suggests that the Commission find that security escorts are unnecessary in cases where a central office could be equipped with automated security card reading systems. These systems are readily available, and are relied upon heavily by many ILECs to track who enters and leaves a central office. Additionally, e.spire notes that simple video camera technology could be used to monitor the activities of any CLEC technician entering an area where equipment is stored, and moreover, contractual indemnification could protect ILECs from any potential security problems as well as encourage CLECs to comply with ILEC security methods of procedure.

D. Reform of Rules Governing Space Preparation Charges is Required (*NPRM*, ¶¶ 123-124)

e.spire strongly urges the Commission to adopt minimum national standards regarding ILEC recovery of nonrecurring costs for collocation, including central office site preparation. In defining minimum standards, the Commission should state a clear presumption against

individual-case-basis ("ICB") or to-be-determined ("TBD") prices. In e.spire's experience, ICB and TBD prices often end up being hidden charges that can greatly increase the cost of collocation.

e.spire also submits that national standards specifically should preclude ILECs from passing through the entire cost of collocation space preparation to the first CLEC to occupy a portion of a collocation area. When an ILEC reconditions space for collocation, it typically installs costly HVAC and power generation equipment. While this equipment is designed to serve many collocators, standard ILEC practice is to charge the initial collocator for the total cost associated with space reconditioning, even where the initial collocator will use only a tiny portion of the available collocation space. Theoretically, the initial collocator gets compensated by other collocators entering the space over time; however, in practice, this cost recovery mechanism is exceedingly difficult to administer and acts as a very serious barrier to entry.

Recognizing the high costs and anticompetitive effects of traditional cost recovery for collocation space preparation, the New York PSC has ruled that Bell Atlantic may charge the initial collocator no more than its *pro rata* share of space preparation costs. In its ruling on this issue, the New York PSC noted:

> In order to remove [space reconditioning as a] competitive barrier to entry, BA-NY will be directed to pay for all special construction costs, except for the initial [telecommunications carrier's] proportionate share of such charges. The need for special construction is likely to become more prevalent. Special construction will be a significant, routine cost for all [telecommunications carriers] and should thus be part of the basic floor space rate.[52]

e.spire submits that the Commission should adopt the cost recovery mechanism used in

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52 New York Public Service Commission, *Order Directing Tariff Changes for Non-Price Terms and Conditions for Collocation,* Case No. *95-C-0657 et al.* (Mar. 2, 1998).

New York for reconditioned space, and permit ILECs to recover only the *pro rata* share of reconditioning costs from the initial collocators. Doing so will avoid the difficulties of administering credits from the ILEC to the initial collocator and also help limit reconditioning as a barrier to entry.

E. Rules Must Preclude Preferential Collocation Arrangements for ILEC Advanced Services Affiliates
(*NPRM*, ¶ 148)

Regarding nondiscriminatory treatment, e.spire supports the Commission's tentative conclusion that ILECs that establish advanced services affiliates "must allow competitive LECs to collocate equipment to the same extent as the incumbent allows its advanced services affiliate." As the Commission notes, any lesser standard would violate the nondiscrimination provisions of the Act. In the virtual collocation context, however, e.spire believes that allowing an ILEC data affiliate to enter a virtual collocation arrangement with its ILEC parent would encourage discriminatory treatment in favor of the ILEC data affiliate. In virtual collocation arrangements, the ILEC maintains complete control of the collocator's equipment, and this degree of control of the ILEC data affiliate's equipment would produce an unmitigated opportunity for preferential treatment that e.spire believes would be undetectable. Thus, virtual collocation should not be permitted between and ILEC data affiliate and its parent.

IV. DEFINING ADDITIONAL UNES AND CLARIFYING EXISTING UNBUNDLING REQUIREMENTS WILL PROMOTE LOCAL COMPETITION AND ACCELERATE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY
(*NPRM*, ¶¶ 150–178)

e.spire supports the Commission's efforts to ensure that the competitive industry has adequate access to the "last mile." The Commission's reiteration of its longstanding

requirements that (1) ILECs must provide unbundled access to two and four wire loops that are conditioned to support xDSL and other advanced technologies, and (2) ILECs must "take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities" is a welcome development that should relieve ILECs of any uncertainty with regard to their obligation to provide competitors with unbundled access to conditioned loops.[53] Consistent with its Section 706 mandate, the actions taken by the Commission in its initial *706 Order* have made clear that advanced facilities and services are subject to the cost–based interconnection and unbundling and avoided–cost resale requirements of Section 251(c).[54] In its *NPRM*, the Commission also reiterated that ILECs may not refuse to provide advanced loops to CLECs on the grounds that they do not provide advanced services themselves and it also made clear that CLECs can use its accelerated docket procedure to seek remedies for violations of the Commission's unbundling requirements.[55] e.spire supports and applauds the Commission for taking each of these steps. However, the Commission is right to recognize that it has both the authority and mandate to do more.[56]

A. Minimum National Standards Should Evolve to Reflect Experience Gained Over the Past Two Years
(*NPRM*, ¶¶ 152–156)

National rules. e.spire supports the Commission's conclusion that minimum national unbundling standards will continue to support the development of local competition and the

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53 *Id.* ¶ 152.

54 *Id.* ¶ 52.

55 *Id.* ¶¶152, 157.

56 *See id.* ¶¶ 154–155.

deployment of advanced telecommunications capability. The Commission's current loop definition properly focuses on functionality rather than technology. However, guidance on how this rule applies and the obligations it entails would be helpful to competitors and incumbents alike. In particular, e.spire agrees with the Commission that additional guidance is needed with respect to loops passing through remote terminals. e.spire also supports the Commission's numerous proposals to adopt additional unbundling rules designed to remove barriers and ensure access to loops that are essential to competitors' efforts to offer and deploy advanced telecommunications services and facilities.

Significantly, e.spire notes that the Commission's authority to define network elements and require unbundling, as well as its ability to do so based on facilities, functions, or both, recently has been upheld by the United States Court of Appeals for the Eighth Circuit.[57] e.spire respectfully submits that the Commission should use its clear authority to define network elements and require unbundling to establish an "extended link" UNE. e.spire's use of the extended link in BellSouth territory, and the New York PSC experience working toward developing it as a UNE, demonstrate that extended link provides an important functionality that can maximize the number of customers that can be served from one collocated end office and minimize space demands in others.

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57 *Southwestern Bell Tel. Co. v. FCC,* 1988 WL 459536 (8th Cir. Aug.10, 1998) ("Pursuant to section 251 (d)(2), it is within the authority of the FCC to determine which of these network elements – *the facilities, functions, or both* – incumbent LECs must make available on an unbundled basis." (emphasis added)).

B. Loop Inventory and OSS
(*NPRM*, ¶¶ 157–158)

The Commission already has established that ILECs must provide nondiscriminatory access to OSS for all loops.[58] It also has determined that "an incumbent LEC does not meet the [OSS] nondiscrimination requirement if it has the capability to electronically identify xDSL–capable loops, either on an individual basis or for an entire central office, while competing providers are relegated to a slower and more cumbersome process to obtain that information."[59] However, in recognition of the ILECs' uniform inability or unwillingness to comply with their OSS obligations, e.spire believes that the Commission should clarify that nondiscriminatory access to loop information regarding physical specifications, including loop type, length, conditioning and electronics already in place, is required.

If ILECs have such information, it should be consolidated into a "loop inventory" and shared it via OSS, web–site posting or providing requesting carriers with an electronic version on diskette. To facilitate the deployment of advanced telecommunications capability and accelerate the roll–out of competitive advanced service offerings, the Commission should require ILECs to update loop inventories on no less than a monthly basis.

e.spire also requests that the Commission adopt the following principles as rules regarding the way in which ILECs charge for such information. First, if an ILEC already has the

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58 *MO&O/NRPM*, ¶ 152, 157-158.

59 *Id.* ¶ 56.

information requested it should be able to charge competitors no more than nominal fee to recover the cost of making it available electronically. Second, if an ILEC has the ability to obtain the requested information electronically and without the dispatch of engineers or technicians, it should not be permitted to impose dispatch charges on its competitors. Third, the charge for loop conditioning information should be cost-based and nonrecurring. Finally, if an ILEC does not charge its advanced services end users a similar nonrecurring charge, it should not be permitted to impose one on CLECs.

C. Loop Spectrum Management
(*NPRM*, ¶¶ 159–162)

With the proliferation of xDSL and the development of other advanced technologies that allow multiple channels to be derived from a single loop, e.spire believes that spectrum management issues will become increasingly important. To ensure the smoothest and widest possible roll–out of this kind of advanced telecommunications capability, e.spire believes that the Commission should establish appropriate loop spectrum management rules today. These rules should apply equally to incumbents and new entrants.

Some rules, particularly those regarding interference, necessarily will require input from industry standards setting bodies and equipment manufacturers. e.spire suggests that the Commission can move this process along most effectively by adopting a collaborative approach similar to the one being used by the New York PSC in its continuing Section 271 proceedings.

Other rules, however, can be adopted in this rulemaking. Most importantly, e.spire believes that the Commission should make clear that two different service providers can offer

services over the same loop, with one carrier proving voice and the other providing data over different frequencies. This arrangement is technically feasible and it will serve to expand consumer choice and options while promoting the deployment of advanced data technologies. Accordingly, the Commission should adopt unbundling rules that: (1) require ILECs to unbundle loop voice and data channels but do not require competitors to purchase both; and (2) allow CLECs to sell loop channels back to the ILEC or another competitor. In conjunction with these unbundling rules, the Commission also should make clear that ILEC voice services still are subject to the resale requirement of Section 251(c)(4), even in cases where a CLEC seeking to resell the ILEC's voice service provides data service over the same loop on an unbundled basis. Finally, with respect to any ILEC advanced services affiliates the Commission may authorize, e.spire supports the Commission's tentative conclusion that any voice product that the ILEC provides to its advanced services affiliate must be made available to CLECs on the same terms and conditions. In this regard, e.spire reiterates two positions discussed above: (1) ILEC advanced services affiliates should not be permitted to resell ILEC services; and (2) ILECs and their affiliates cannot create favorable terms and conditions on the basis of volume commitments that most, if not all, CLECs cannot meet.

D. Loop Technical Standards
(*NPRM*, ¶ 163)

e.spire supports the Commission's tentative conclusion that it should adopt national technical standards for attaching electrical equipment (such as modems and multiplexers) on the central office end of loops. As noted by the Commission; ILECs currently set their own standards, which imposes unnecessary costs, delays and uncertainty on CLECs. Here, too, input from industry standards setting bodies and equipment manufacturers may be required and a collaborative approach probably will be most effective. Until such a process is completed,

however, e.spire submits that Commission should establish a rule forbidding ILECs from establishing requirements that exceed those already established by industry fora and equipment manufacturers.

E. Unbundling Loop Functionalities Necessary for the Deployment of Advanced Services
(*NPRM*, ¶¶ 164, 167–68)

The Commission's rules currently provide that:

> The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and end user customer premise."[60]

As indicated above, e.spire believes that this definition properly focuses on functionality rather than technology. Because loop technologies will continue to evolve, e.spire believes that it would be unwise to stray from a functional approach to defining UNEs.

Instead, e.spire submits that Commission should provide additional guidance, in the form of complementary unbundling rules, setting forth how this definition applies and the obligations it entails. To promote local competition and facilitate the deployment of advanced telecommunications infrastructure, the Commission also should define an extended link UNE and require subloop unbundling for loops passing through remote terminals. Each of these actions will provide competitors with additional opportunities to compete and consumers with additional choices in voice and advanced service providers.

1. ILECs Currently Must Offer Four Basic Loop Types: Two Wire Analog, Four Wire Analog, Two Wire Digital, Four Wire Digital

Currently, there are four basic types of loops deployed in ILEC – and, for that matter, CLEC --

networks. They are: two wire analog, four wire analog, two wire digital, and four wire digital loops. Effective local competition and timely advanced telecommunications infrastructure deployment depend on the ubiquitous availability of each of these loop types. Thus, e.spire submits that the Commission should adopt a rule establishing that all four types of loops must be made available on an unbundled basis.

Because ILECs currently pad their loop prices through the use of fancy labels such as ISDN and ADSL loops (typically, without providing the electronics that actually would make, for example, a four wire digital loop an "ADSL loop"), e.spire submits that the Commission should adopt a rule that requires ILECs to classify their loops as one of the four types listed above. With these classifications in place, the Commission then should adopt a uniform national framework for imposing unbundled loop recurring and nonrecurring charges. Consistent with current law, the rule should specify the manner – but not the amount – in which an ILEC can impose recurring and nonrecurring charges associated with its provisioning of each of the four loop types. e.spire firmly believes that such action significantly will diminish an ILEC's ability to inflate its competitor's costs of obtaining access to loops necessary to provision both traditional voice and advanced broadband services.

Specifically, e.spire submits that, for loops that are not equipped with electronics, ILECs should be permitted to impose *recurring* charges only on the basis of whether a loop is a two or four wire loop. For loops that require conditioning – digital two wire and digital four wire loops – ILECs should be allowed to impose a *nonrecurring* conditioning charge only, if they impose a similar charge on their own end users. In cases where a CLEC wins a customer away from an

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60 47 C.F.R. § 51.319.

ILEC and elects to serve that customer with an unbundled loop that already has been conditioned for the ILEC's prior use, the ILEC should not be allowed to impose a nonrecurring charge on the CLEC, as it already will have had the opportunity to recover its conditioning costs from its own end user. For loops that are equipped with electronics, ILECs may adjust the applicable recurring loop charge consistent with individual state commission cost-based pricing rules.

2. ILEC Loop Electronics Must Be Unbundled as Part of an Electronically-Equipped Loop

As indicated in the preceding section, e.spire believes that ILECs must offer loops equipped with electronics (*e.g.*, ADSL-equipped loops) on an unbundled basis. Thus, e.spire submits that the Commission should clarify that ILECs must offer unbundled loops capable of supporting advanced digital electronics *and* loops equipped with such electronics, if they already have such equipment in place. This requirement not only is technically feasible, it is consistent with the Commission's existing loop definition which defines the loop without reference to specific equipment or technology deployed in delivering that functionality. Because that definition does not contemplate, and the Commission's rules do not otherwise permit, an ILEC's stripping-away of electronics so that it can diminish the functionality of unbundled loops it provides to its competitors, the Commission should prohibit ILECs from doing so, unless the competitor seeks access to the loop without electronics.

Although, if adopted, the Commission's ILEC advanced services affiliate proposal certainly will limit the availability of unbundled electronically-equipped loops, e.spire submits that, consistent with the broad goals of the 1996 Act, the Commission should provide competitors with every possible opportunity to compete. Indeed, if the Commission wisely were to forego adopting its ILEC advanced services affiliate proposal, the availability of electronically-equipped loops, in addition to electronically-capable loops, could afford competitors with significant opportunities to broaden the reach of their advanced service offerings. In this environment, ILEC advanced services offerings also would be available for resale, thus providing competitors with all three methods of entry into the advanced services market and the field-leveling opportunity to share in an incumbent's economies of scale that are

no less present with respect to the deployment of loop electronics than they are with respect to any other part of an ILEC network.

3. Extended Link Should Be Defined as a UNE

As indicated above in e.spire's separate discussions of the need for efficient collocation practices and the utility of evolving national rules, e.spire believes that the Commission should define extended link as a UNE. e.spire's use of the extended link in BellSouth territory and the New York PSC's experience working toward developing an extended link UNE demonstrate that it provides an important functionality – composed of loop, multiplexing and transport – that can maximize the number of customers that can be reached through a single collocation arrangement. Thus, in addition to alleviating space constraints in ILEC end offices, unbundled access to such functionality also will accelerate and expand competitors' roll-outs of both traditional voice and advanced services offerings.

In light of the Eighth Circuit's recent shared transport decision, in which it upheld the Commission's functional approach to defining UNEs, there is no doubt that the Commission has the requisite authority to define the functionality offered by an extended link arrangement as a single UNE. Notably, an extended link does not provide an end-to-end service, as it must be combined with a CLEC's own switching equipment. Thus, adopting an extended link UNE cannot be challenged on the basis that it blurs the line between cost-based unbundling of network elements and avoided-cost resale of retail services.

To ensure that defining an extended link UNE will have its intended effect, e.spire submits that the Commission should preempt ILEC attempts to limit its usefulness by refusing to incorporate loops and transport capable of supporting advanced applications. For example, extended links that incorporate four wire digital loops and fiber transport will be most useful to